



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;

Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in the Prescreen Opt-Out Notice Rule (“Prescreen Opt-Out Rule” or “Rule”), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the provisions (subpart F) of the CFPB’s Regulation V regarding other entities (“CFPB Rule”). This clearance expires on October 31, 2016.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION

section below. Write “Prescreen Opt-Out Disclosure Rule: FTC File No. P075417” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/prescreenoptoutpra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed Karen Jagielski, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8232, Washington, DC 20580, (202) 326–2509.

SUPPLEMENTARY INFORMATION:

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC’s rulemaking authority for the prescreen opt-

¹ Public Law 111–203, 124 Stat. 1376 (2010).

out provisions of the Fair Credit Reporting Act (“FCRA”),² on July 21, 2011.³ For certain other portions of the FCRA, the FTC retains its full rulemaking authority.⁴

The FTC retains rulemaking authority for its Prescreen Opt-Out Rule, 16 CFR Part 642, solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁵

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the prescreen opt-out provisions (subpart F) of CFPB’s Regulation V.⁶ Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies’ respective burden estimates reflecting their overlapping enforcement jurisdiction, with

² 15 U.S.C. 1681 *et seq.*

³ Dodd-Frank Act, at section 1061. This date was the “designated transfer date” established by the Treasury Department under the Dodd-Frank Act. See Dep’t of the Treasury, Bureau of Consumer Financial Protection; Designated Transfer Date, 75 FR 57252, 57253 (Sept. 20, 2010); see also Dodd-Frank Act, at section 1062.

⁴ The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (“Red Flag Guidelines and Regulations Required”) and 628 (“Disposal of Records”). See 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its “Identity Theft Rules,” 16 CFR Part 681, and its rules governing “Disposal of Consumer Report Information and Records,” 16 CFR Part 682. See 15 U.S.C. 1681m, 1681w.

⁵ See Dodd-Frank Act, at section 1029 (a), (c).

⁶ 76 FR 79308 (Dec. 21, 2011). Subpart F of the interim final rule became effective on December 30, 2011, and is codified at 12 CFR 1022.54.

the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion in the Burden Statement below, following preliminary background information, continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Background

Section 615(d) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681m(d)(1), requires that any person who uses a consumer report in order to make an unsolicited firm offer of credit or insurance to the consumer, shall provide with each written solicitation a clear and conspicuous statement that:

(A) information contained in the consumer’s consumer report was used in connection with the transaction; (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral; (D) the consumer has a right to prohibit information contained in the consumer’s file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and (E) the consumer

may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [of the FCRA].

Section 615(d)(1) of the FCRA [15U.S.C. 1681m(d)(1)].

Section 615(d) of the FCRA requires further that the disclosure statement “be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the [CFPB], by rule, in consultation with the [FTC], Federal banking agencies and the National Credit Union Administration.”

Section 642.3 of the FTC Rule⁷ and section 1022.54⁸ of the CFPB Rule implement this requirement by establishing a “layered” notice approach that requires a short, simple, and easy-to-understand statement of consumers’ opt-out rights on the first page of the prescreened solicitation, along with a longer statement containing additional details elsewhere in the solicitation. Specifically, the Rule required that a short notice be placed on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message. The Rule specifies that the type size be larger than the type size of the principal text on the same page, but in no event smaller than 12-point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same

⁷ 16 CFR 642.3.

⁸ 12 CFR 1022.54.

page. The Rule further provides that the long notice, that appears elsewhere in the solicitation, be in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type. The long notice shall begin with a heading in capital letters and underlined, and identifying the long notice as the “PRESCREEN & OPT-OUT NOTICE” in a type style that is distinct from the principal type style used on the same page and be set apart from other text on the page. The Rule also includes model notices in English and Spanish.

Under the Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501-3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. “Collection of information” means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's rules and regulations under the Prescreen Opt-Out Notice Rule, 16 CFR Part 642 (OMB Control Number 3084-0132).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are

to respond. All comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

Burden Statement

The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

The current FTC apportionment of its share of PRA burden is the following:

Total Number of Respondents: 499

Total Burden Hours: 998

Total Labor Costs: \$249,500

Total Capital/Non-Labor Costs: \$0.

These figures were determined as follows:

A. Number of Respondents

FTC staff estimates that between 500 and 750 entities make prescreened solicitations. Staff conservatively assumed the high-end of this range for further apportioning. From the total

of 750 respondents, FTC staff assumed a 33% “carve-out”⁹ to the FTC for the above-noted motor vehicle dealers. This resulted in an estimate of 248 motor vehicle dealers subject to the FTC’s jurisdiction. After deducting the latter figure from the total of 750 respondents, 502 respondents were left to divide 50:50 between the agencies. With rounding, the FTC apportioned 251 of those respondents to its burden estimates; adding to that the estimated total of 248 motor vehicle dealers resulted in 499 respondents for the FTC.

B. FTC Share of Burden Hours: 998 hours

Staff assumed that respondents will each spend approximately 2 hours to monitor compliance with the Rule. Thus, 499 respondents for the FTC multiplied by the two hour estimate per respondent resulted in 998 burden hours apportioned to the FTC.

C. FTC Share of Labor Costs: \$249,500

Staff assumed that in-house legal counsel for respondents would handle most of the compliance review, and at an estimated average hourly wage of \$250 per hour.

⁹ For purposes of estimating its motor vehicle dealer furnisher carve-out, the FTC has assumed that 33% of the respondents constitute the number of motor vehicle dealers over which the FTC retains exclusive jurisdiction under the Dodd-Frank Act. To derive this 33% estimate, FTC staff divided an estimated number of car dealers—62,750 (based on industry data for the number of franchise/new car and independent/used car dealers) by 199,500 (Commission staff’s PRA estimate of the number of entities that extend credit to consumers subject to FTC jurisdiction under the FCRA, pre-Dodd-Frank, for the Risk-Based Pricing regulations, as detailed at 75 FR 2724, 2748 n.18 (Jan. 15, 2010)). This came out to 31%. Staff increased this amount to 33% to account for other motor vehicle dealer types (motorbikes, boats, other recreational) also covered within the definition of “motor vehicle dealer” under section 1029(a) of the Dodd-Frank Act.

D. Capital/Non-Labor Costs: \$0

Assumption: Capital and other nonlabor costs should be minimal, at most, since the Rule has been in effect several years, with covered entities now equipped to provide the required notice.

Based on staff's review of industry data and its experience in this area, we have no information to suggest that these figures are not still valid.

Request for Comments

You can file a comment online or on paper. Write "Prescreen Opt-Out Disclosure Rule: FTC File No. P075417" on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as a Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which

is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/prescreenoptoutpra> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Prescreen Opt-Out Disclosure Rule: FTC File No. P075417” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610, (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th

Floor, Suite 5610, (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,
Acting General Counsel
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